AIR POUCH
PRIORITY

RESTRICTED-Security Info.
(Security Classification)

DO NOT TYPE IN THIS SPACE
611.94A/1-252

FOREIGN SERVICE DESPATCH

FROM : USPOLAD, Tokyo

963
DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON.

January 2, 1952

REF : Misdes 924, December 19, 1951

DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY [illegible] DATE 3/19/82
E.O. 12356 EXCEPTION CATEGORY [illegible]
DECLASSIFY IN FULL [illegible]
RELEASE DENIED ☐
PA or FOI EXEMPTIONS

26 For Dept. Use Only	ACTION	DEPT.					
	FE	INFO	EMP	DCR	OLI	[illegible]	☐ or NSC ☐ E.T. DATE
	REC'D JAN 8	OTHER	COMM	TAR			

SUBJECT: FCN Treaty with Japan

Representatives of the Ministry of Foreign Affairs met with Mission officers on December 28 to review the various points covered during previous informal and exploratory talks covering the Department's standard draft for an FCN Treaty (Misdesps 871 of December 7, 915 of December 17, and 924 of December 19, 1951). A number of questions were raised by the Japanese officials during this review meeting, of which all but the four specific points outlined in this despatch were answered to their satisfaction.

At the close of the review, Mr. Morio YUKAWA, Chief of the Ministry's Economic Affairs Bureau, was asked for his views as to which of the various issues discussed might be considered possible points for formal negotiation. Mr. Yukawa replied that he believed many of the Ministry's questions might be resolved when the comments previously requested of the Department have been received. In his opinion, however, at least the following two points would require negotiation:

a. The Japanese reservation with reference to Paragraph 3, Article XXI (Misdes 924, December 19) on the exclusion of certain concessions under multilateral agreements - such as GATT - from MFN treatment extended under this draft treaty; and

b. The Japanese proposal (Misdes 924) that a statement on customs valuation similar to that incorporated in Article VII of GATT be included in the FCN Treaty with Japan.

Mr. Yukawa stated that many of the questions raised by the Japanese representatives are for the purpose of drafting clear definitions for use in talks with other Government ministries. He added that he also expected numerous requests for clarification from the Diet. He anticipates that the most serious point to be raised by the Diet is "the fact that Japan's treatment of Americans is much better than that accorded Japanese under United States laws which are discriminatory because they are based on the unfortunate Act of 1924". Mr. Yukawa stated that he believed that a number of paragraphs in the model draft are labored in construction, and are therefore difficult to translate, simply because they are based on existing inequality of treatment. He agreed with Mission officers that the phrases in question might have been so drafted as to be applicable if the Act of May 26, 1924 were superseded by a more favorable law. He was informed by Mission officers of the existence of two bills in Congress (S. 2055 and H.R. 5678) which would repeal the Act of 1924 and remove the present barrier to naturalization of Japanese. Mr. Yukawa expressed the hope that Congressional action

RWAdams:nll
REPORTER

RESTRICTED-Security Info.

INFORMATION COPY
Retain in divisional files or destroy in accordance with security regulations.

Article XIX. The Japanese representatives again stated that they believed that paragraph 3 of this Article should pertain only to vessels and cargoes, and that a separate paragraph should be established for the final phrase:

"but each Party may reserve exclusive rights and privileges to its own vessels with respect to the coasting trade, inland navigation and national fisheries".

They once more appeared to accept the explanation that this clause was in its most appropriate place in the model draft, and withdrew their proposal. The Department's comments would be appreciated, however, should this point again be raised by the Ministry's representatives.

Also in connection with this clause, the Japanese pointed out that it is possible that agreement may be reached at some future date with the United Kingdom whereby mutual advantages on limited coast-wise shipping may be extended. The British, for example, have already approached the Japanese with a suggestion that "transshipment" privileges (i.e. the carrying of British cargoes on through-bills-of-lading from a central port in Japan to other Japanese ports) be extended to British shipping. In return for this, the Japanese expect to be granted transshipment rights between colonial ports (e.g., between Hong Kong and Singapore), which would be most advantageous to Japanese shippers. The Ministry's representatives would therefore appreciate the Department's comments on whether such an arrangement with the United Kingdom would be within the scope of the rights reserved by Japan under paragraph 3. The Japanese officials would like a clear understanding on this point in order that they may proceed with plans for limited coasting rights on a reciprocal basis without risking possible demands by ourselves or other countries for equal rights under the principle of MFN treatment. Since the Japanese hope to use the FCN Treaty with the United States as a model for negotiations with other countries, their freedom of action in this regard (despite MFN clauses) is of importance with respect to Korea, the Philippines, and other areas trading with Japan.

For the Political Adviser:

Peyton Kerr

Peyton Kerr
First Secretary of Mission

would be completed before the FCN Treaty is presented to the Diet for ratification.

Since legislation along the lines of the bills mentioned may not have been enacted prior to Diet deliberations on the FCN Treaty, and in view of the particular political importance attached to this point by the Ministry of Foreign Affairs, it is suggested that a statement by the Department be held in readiness to support the Ministry before the Diet. It is suggested that such a statement review the existing situation, outline the provisions of the bills presently before Congress, and contain an expression of the Department's position on immigration and naturalization of Japanese and - possibly - of the hope that present legislation may soon be modified. It would be appreciated if the Department would give consideration to the drafting of such a statement for use, if necessary, in supporting the Ministry's request for ratification of the FCN Treaty by the Diet.

The following questions, raised by the Japanese representatives during the review on December 28, are submitted to the Department for its earliest comment:

Article I. The Ministry's officials again raised the point that this Article is so general in nature that they prefer to incorporate it in the Preamble. Although this suggestion - as well as continued questions as to the full meaning of the term "equitable treatment" - was deferred pending further study by the Japanese, the Department's comments on a possible substitute for the words "equitable treatment" would be useful to the Mission if further question is raised by the Ministry's representatives.

Article XI.

a. Allegedly because of translation difficulties - but actually because they hold that the word is unnecessary - the Japanese question the need for the term "residents" in the last line of paragraph 3 ("nationals, residents and companies of any third country"). They hold that "nationals and companies" alone will cover all possible cases to which this Article would apply, and declare that a resident of a third country who is not a national of that country is obviously a national of some other third country. Although the Japanese representatives agreed with the Mission that this term would clarify the position of stateless persons, they appeared to anticipate some difficulties in connection with special treatment - now in a vague planning stage - which may be extended Korean residents of Japan. The Department's comments on the inclusion of the word "residents" in paragraph 3 would be appreciated.

b. With reference to paragraph 5 (c) of this Article, the Japanese representatives feel that this reservation is far too broad, and stated that they prefer the terminology employed in the treaty with Colombia (also paragraph 5 c of Article XI). They admit, however, that the limitation to contiguous countries included in the treaty with Colombia is not appropriate in the present case, but believe that we may have some obscure purpose in referring to "non-residents" rather than to "non-resident nationals" in this sub-paragraph. Any suggestion from the Department on an acceptable modification of this clause - more closely to conform with the more specific phraseology of the treaty with Colombia - would be appreciated.

Mr. Yukawa then asked whether it was understood that those aliens engaging in certain activities, even if employed for the exclusive account of a company, such as certified public accountants (in the preparation of required certificates, applications, tax declarations, and corporate accounts) as well as architects, civil, electrical and mechanical engineers, and other technicians engaged in activities related to public interest or public safety, must comply with qualifications and requirements of technical competence applicable to nationals in the same professions.

Mr. Adams replied that it was clearly understood that individuals engaged in the activities mentioned by Mr. Yukawa should under any circumstances comply with local requirements regarding qualifications and competence.

Mr. Yukawa then stated that with respect to professional activities, Japan desired specifically to reserve the profession of port pilots and notaries public, since it was not believed that aliens should be permitted to engage in these two activities.

Mr. Adams replied that consideration might be given, if necessary, to an exception in paragraph 2, Article VIII, for a limited number of professions of an especially sensitive status, but that this paragraph should not be undermined by an immoderate list of reserved professions. He added that there are state laws in the United States barring aliens from the practice of some professions, but reminded the Japanese representatives of Dr. Waring's earlier statement to the effect that the FCN Treaty would be paramount over state legislation in these matters. Mr. Adams added that to the extent the FCN Treaty granted national treatment with respect to the exercise of professions, any contrary provision of state laws would ipso facto be overriden. Mr. Singer added that the existence of such state regulations barring aliens from certain professions brought into sharp focus the advantage to Japanese nationals of retaining paragraph 2 with as few exceptions as possible.

Mr. Otabe stated that notaries public are regarded as having quasi-official status and are appointed from among duly qualified Japanese nationals by the Attorney General. The restriction on aliens becoming port pilots, added Mr. Otabe, was common to all countries in accordance with established international practice.

Mr. Adams asked whether the Japanese representatives wished to exclude any other professions from the national treatment provisions of paragraph 2. Receiving a negative reply from Mr. Yukawa, Mr. Adams stated that the Japanese proposal regarding port pilots and notaries public would be submitted to the Department of State for its consideration.

Mr. Otabe then stated that the first sentence of paragraph 3, Article VIII, had already been included as paragraph 3 of the revised Article VII previously proposed by the Japanese side. Mr. Otabe suggested that the second sentence (regarding political activities) of paragraph 3, Article VIII be inserted in Article XXI of the standard draft in as much as it stipulates a general excep-

BEST COPY AVAILABLE

BEST COPY AVAILABLE

[illegible] treaty. If this were done, and the revised Article [illegible] Japanese were acceptable to the Department of State, paragraph [illegible] draft's article VIII would disappear.

Mr. Adams replied that further discussion of this point should be deferred pending clarification of the questions raised at the previous meeting on Article VII. He added that Mr. Doabe's suggestion regarding the second sentence of paragraph [illegible] Article VIII would be referred to the Department of State for consideration.

It was understood that the Japanese proposals for the insertion of "for the exclusive account of their employers" in paragraph 1, the insertion of an exception [illegible] pilots and notaries public in paragraph 2, and the moving of the second sentence, paragraph 3, to Article XXI would be referred to the Department of State. The Japanese suggestion regarding the remainder of paragraph 3 was deferred pending further discussions on Article VII. Mr. Yukawa stated that there were no further points with reference to Article VIII and proposed that meeting proceed with the next article.

ARTICLE IX

Mr. Yukawa stated that the manner of providing separately for the treatment to be accorded to the nationals of either party with respect to acquisition of title to land or rights in all other immovable properties should be avoided, that a uniform provision should be adopted as in the case of other articles, and that most-favored-nation treatment should be accorded in this matter. He added that a great deal of importance was attached to this point since it would discriminate against Japanese in the United States, and would therefore be subject to severe criticism in the Diet. Mr. Yukawa stated further that for the same reason it was desired that national and most-favored-nation treatment should be stipulated in both paragraphs 1 and 2 regarding the leasing of land and buildings necessary or incidental to the conduct of any business or other activity permitted under Article VII and VIII of the standard draft.

Mr. Singer stated that it was not correct to suppose that this Article would discriminate against Japanese in the United States. Although the standard draft provisions on real property might on first impression appear unbalanced, Mr. Singer pointed out that a closer analysis would reveal the genuine reciprocity which is achieved [illegible] the terms of Article IX. Mr. Singer added that this Article does not in any way breach the principle that all proposed provisions of the treaty should be - and are in fact - based on mutuality. He indicated that Uruguay, Colombia, Italy and Israel were persuaded of the correctness of this view and were therefore able to accept the Department of State's standard Article IX, as was also in a way done Greece with appropriate recasting of language to fit local circumstances. Mr. Singer stated that the Department of State has endeavored in its standard draft to formulate provisions on real property as close to the national treatment level as practical considerations permit. Mr. Singer pointed out [illegible] to reciprocal national treatment on leasing properties

for treaty purposes (notwithstanding any state law to the contrary) and that there is reciprocal national treatment as to ownership generally insofar as the local laws of the United States permit. He also pointed out that there is the right to withhold national treatment on ownership of property, insofar as Japan may wish to exercise this right with respect to citizens and corporations of individual states of the United States which may deny or restrict national treatment to Japanese. Mr. Singer emphasized that Japan would be free to assure equalization of rights in connection with Article IX.

Mr. Hirasawa stated that the Japanese side would take note of Mr. Singer's explanation. He stated that he thought there was not true bilateral reciprocity, but rather that it was a one-sided or unilateral reciprocity, because if Japan permitted a person domiciled in California, for example, to acquire title to land in Japan, the Japanese Government could not claim a similar right for a Japanese national in California.

Mr. Kanematsu inquired whether the FCN Treaty would not - as in the case of professional activity previously discussed - be paramount over state legislation with respect to property rights. If this were the case, Mr. Kanematsu added, Article IX could be re-drafted along lines similar to other articles of the standard draft.

Mr. Adams replied that interference by treaty with individual state prerogatives in the United States with respect to land policies had historically been a delicate subject and that the United States Senate had in the past refused to ratify at least two treaties which attempted to set aside these state prerogatives and establish a treaty right to national treatment on real property ownership. Mr. Adams added that it is possible, however, to provide national treatment with respect to the leasing of real property necessary to the conduct of treaty activities (notwithstanding some state laws circumscribing alien leaseholds) and that this was a very valuable treaty right in the United States. The standard draft offers to assure such leasehold rights.

Mr. Singer stated that with respect to ownership rights, the Department of State's proposal - a "de facto reciprocity" formula first developed in the treaty of 1937 with Siam - was devised to approach the national treatment ideal as nearly as possible. This formula provides in effect for reciprocal national treatment on ownership to the extent that state laws permit, but it establishes Japan's right to withhold this standard of treatment from citizens and corporations of states in the United States that do not accord national treatment to Japanese nationals and corporations. He said that this formula in previous treaties is reported to have influenced some states toward ameliorating the alien disabilities of their real property laws, and the adoption of this formula in treaties with Japan and other countries would undoubtedly be pertinent to the reconsideration (now evident in the United States) of alien land disabilities still persisting in certain state laws. Mr. Singer added that local regulations and policies in the United States make it necessary that paragraph 1 (b), Article IX be formulated in just such a manner as is found in the standard draft, and that paragraph 2 is designed to permit similar reservations on property rights on the part of Japan or any other country which concludes an FCN Treaty with the United States.